

Memorandum

City of Lawrence

Planning & Development Services

TO: Planning Commission

FROM: Mary Miller, Planner

CC: Scott McCullough, Planning and Development Services Director

Date: For February 26, 2014 meeting

RE: MISC NO. 1; VARIANCE FOR CERTIFICATE OF SURVEY; 120 HWY 40(MKM)

CSR-13-00496: Consider a variance associated with a Certificate of Survey for approximately 30 acres located at 120 Hwy 40. The variance is requested from Section 20-810(e)(5)(ii) of the Subdivision Regulations [Section 11-110(e)(5)(ii) of the County Code] to allow the creation of Residential Development Parcels on a principal arterial with less than the required right-of-way. Submitted by Rogers Surveying, for Howard Z Smith, Trustee and Fredonna L. Smith, Trustee property owners of record.

Attachment A: Certificate of Survey, CSR-13-496

Certificates of Survey are processed administratively but Planning Commission approval is required for variances from the Subdivision Design Standards. The Certificate of Survey referenced above was recently submitted and is currently under review. A copy of the Certificate of Survey is being provided with this memo for context; however, no action is required on the Certificate of Survey.

The Subdivision Regulations state that an applicant may request a variance from the Design Standards in the Regulations in accordance with the variance procedures outlined in Section 20-813(g) [11-113(g), County Code]. This section lists the criteria that must be met in order for a variance to be approved. A discussion of the requested variance follows with an evaluation with the approval criteria:

VARIANCE REQUESTED: Creation of a Rural Certificate of Survey with Residential Development Parcels on a principal arterial road with 33 ft of right-of-way.

A Rural Certificate of Survey is a residential land division that is permitted in the unincorporated portions of the county that are outside the Urban Growth Areas. A minimum of 20 acres is required for a Certificate of Survey and a maximum of 2 developable parcels (Residential Development Parcels or RDPs) are possible, unless the property is bounded on 2 sides by local roads; in which case 3 RDPs are possible.

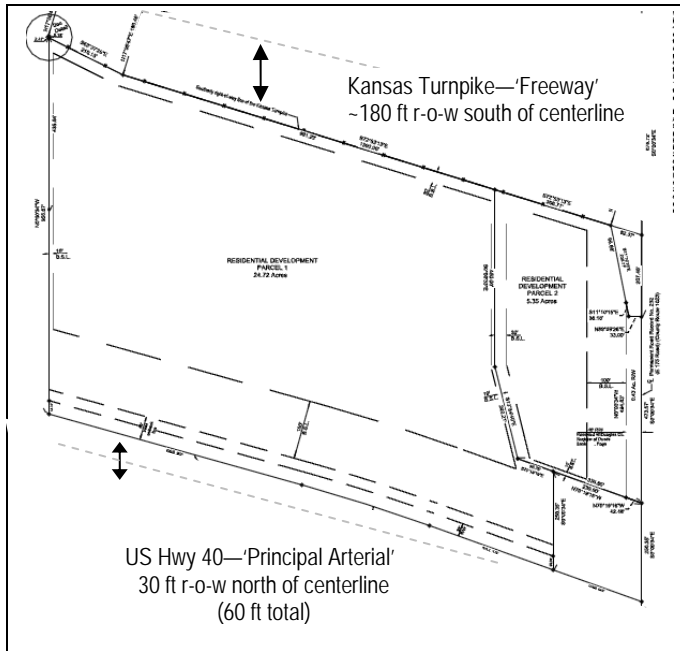


Figure 1a. Layout on submitted Certificate of Survey



Figure 1b. Aerial showing subject property.

The Subdivision Regulations require the dedication of 120 ft of right-of-way for roads which are classified as 'principal arterials' on the County Access Management Map (one-half, 60 ft, would be the responsibility of the property owner on each side of the street). As 60 ft is currently available, the dedication of an additional 30 ft of right-of-way would be required. The applicant requested a variance from the requirement to dedicate additional right-of-way for Hwy 40 along the south side of their property. Additional right-of-way will be dedicated for E 175 Road to the east of the subject property and adequate right-of-way is provided to the north for the I-70 Kansas Turnpike.

Criteria 1. Strict application of these regulations will create an unnecessary hardship upon the Subdivider.

Strict application of these regulations would require the dedication of approximately 30 ft of additional right-of-way for Hwy 40 along the south property line. The subject property contains 30 acres and has adequate area for the dedication of the additional right-of-way; however, dedicating the additional right-of-way would increase the encroachment of the existing house into the required front setback. The hardship would be unnecessary in that KDOT indicated that they would not require additional right-of-way for the highway with this development, but would require dedication of additional right-of-way when more significant development occurs. The County Engineer deferred to KDOT on this issue. As there is no need for the right-of-way at this time, requiring the applicant to dedicate additional right-of-way would be unnecessary.

Staff Finding:

The dedication of additional right-of-way for Hwy 40 would be an unnecessary hardship upon the property owner as KDOT indicated additional right-of-way is not required at this time.

Criteria 2. The proposed variance is in harmony with the intended purpose of these regulations.

Right-of-way dedication is required when properties are subdivided to insure the required right-of-way is available for improvements to adjacent roadways. The KDOT representative indicated that additional right-of-way for Hwy 40 is not needed at this time, and would not be required with the small scale of development which is occurring on the subject property (creation of one additional residential property); however, additional right-of-way would be required if more intense development were proposed. A note should be added to the Certificate of Survey which notes that right-of-way was not required by KDOT at this time, but additional right-of-way must be dedicated when more intense development occurs.

Staff Finding:

The variance will allow the proposed land division to occur without requiring the dedication of additional right-of-way. The Certificate of Survey should note that the dedication of additional right-of-way is not required at this time, but would be required with future, more intense development to insure adequate right-of-way will be available for future improvements.

Criteria 3: The public health, safety, and welfare will be protected.

Approximately 60 ft of right-of-way is available for Hwy 40, a principal arterial, in this location. Per the Subdivision Regulations, a principal arterial requires 120 ft of right-of-way and 30 ft of additional right-of-way would be needed from the subject property; however, KDOT indicated they would not require the dedication of additional right-of-way with this small scale of development. Additional right-of-way would be required when more intense development occurs, or would be obtained when needed for future improvements to Hwy 40.

Staff Finding:

Granting of the variance will result in the subdivision of one residential parcel into 2 to allow the creation of one additional residence in this location. The new residence will take access from E 175 Road. No changes are being proposed to the Hwy 40 frontage. While the right-of-way currently provided for Hwy 40 in this location is not compliant with the Subdivision Regulations for a road classified as a 'principal arterial'; given the small scale of development which is proposed and KDOT's acceptance of the existing right-of-way width, Staff supports the requested variance. The County Engineer deferred to KDOT in this case.

STAFF RECOMMENDATION:

Approve the variance requested from Section 20-810(e)(5)(ii) of the Subdivision Regulations [Section 11-110(e)(5)(ii) of the County Code] to allow a land division through Certificate of Survey CSR-13-00496 to create 2 RDPs without the dedication of additional right-of-way where the property is adjacent to Hwy 40 subject to the following condition:

1. The following notes shall be added to the Certificate of Survey:
 - a. *"The Planning Commission approved a variance from Section 20-810(e)(5)(ii) to allow the land division to occur without the dedication of additional right-of-way where the property is adjacent to Hwy 40."*
 - b. *"KDOT did not require the dedication of additional right-of-way with this land division, but indicated that additional right-of-way would be required when more intense development were proposed."*



8. Development on Residential Development Parcels shall comply with the Douglas County Access Management Regulations, Chapter IX, Article 5 of the Douglas County Code.

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Mary Miller

From: lfinger@douglas-county.com
Sent: Friday, February 14, 2014 11:51 AM
To: Thad@ksdot.org
Cc: kbrowning@douglas-county.com; tgorman@douglas-county.com; Mary Miller
Subject: RE: 22-13 C of S Howard Z. Smith

Thank you so much. Have a great Friday – TGIF!

Linda

Interim Director, Douglas County Zoning & Codes Department
Planning Resource Coordinator
lfinger@douglas-county.com

From: Thad T Fowler [mailto:Thad@ksdot.org]
Sent: Friday, February 14, 2014 11:46 AM
To: AD - Finger, Linda
Cc: PW - Browning, Keith; PW - Gorman, Terese; mmiller@lawrenceks.org
Subject: RE: 22-13 C of S Howard Z. Smith

Actually, I just heard back from everyone a few minutes ago, Linda. KDOT does not desire to request additional rights of way to be dedicated for this residential development.

It is very much appreciated that we were given the opportunity.

Thad

From: lfinger@douglas-county.com [mailto:lfinger@douglas-county.com]
Sent: Friday, February 14, 2014 11:43 AM
To: Thad T Fowler
Cc: kbrowning_douglas-county.com; tgorman_douglas-county.com; mmiller@lawrenceks.org
Subject: RE: 22-13 C of S Howard Z. Smith

Thad,

Thanks for the quick response. Early next week for a response would be fine.

Linda M. Finger, AICP, CFM, RLA
Interim Director, Douglas County Zoning & Codes Department
Planning Resource Coordinator
lfinger@douglas-county.com
785.331.1343
785.331.1347

From: Thad T Fowler [mailto:Thad@ksdot.org]
Sent: Friday, February 14, 2014 10:37 AM
To: AD - Finger, Linda

Cc: PW - Browning, Keith; PW - Gorman, Terese; mmiller@lawrenceks.org

Subject: RE: 22-13 C of S Howard Z. Smith

Hello Linda,

Blaine Smith forwarded this to me on yesterday. I've solicited input from several entities here at KDOT as to the desirability of additional rights of way and expect to hear back from them early next week. If this is more time sensitive than that schedule, please let me know and I'll try to expedite a response.

Thad

Thad T Fowler, PLS | Coordinating Land Surveyor | Bureau of Right of Way

Ph.: 785-296-6939 | thad@ksdot.org



Eisenhower State Office Building | 700 SW Harrison Street, 14th Floor | Topeka, Kansas 66603

From: lfinger@douglas-county.com [<mailto:lfinger@douglas-county.com>]

Sent: Friday, February 14, 2014 9:09 AM

To: Thad T Fowler

Cc: kbrowning@douglas-county.com; tgorman@douglas-county.com; mmiller@lawrenceks.org

Subject: FW: 22-13 C of S Howard Z. Smith

Good Morning, Thad,

We have a property owner, Howard Smith, in Douglas County who is dividing his property along US Hwy 40 through an administrative procedure called a Certificate of Survey, which replaced platting for residential developments in our County. A requirement in our regulations is the dedication of additional road right-of-way, if needed, to meet the minimum standards for the classification of road accessed. As you can tell from the attached drawing, there appears to be only 33' of right-of-way for US 40 in this location. I understand right-of-way along this road is owned in many different forms. Would KDOT like additional right-of-way to be dedicated at this time? If so, how much?

The only development that can occur on the 2- Residential Development Parcels being created is one house per parcel. As there is already a house on RDP 2, the net additional development (as a result of this Certificate of Survey) will be one additional home. It will take access from US 40. The existing home takes access from a township road (E 175 Rd) and is not permitted access to US 40 because it lacks the required 1,320' frontage in our regulations for access to that classification of road.

Thank you for time.

Linda M. Finger, AICP, CFM, RLA

Interim Director, Douglas County Zoning & Codes Department
Planning Resource Coordinator

lfinger@douglas-county.com

785.331.1343

785.331.1347

From: PW - Gorman, Terese
Sent: Thursday, February 13, 2014 4:49 PM
To: AD - Finger, Linda
Subject: FW: 22-13 C of S Howard Z. Smith

For your info. Don't you know Thad Fowler? Maybe you want to call him? I think I may have met him once or twice.

Terese

From: Blaine Smith [<mailto:blaine@ksdot.org>]
Sent: Thursday, February 13, 2014 2:08 PM
To: PW - Gorman, Terese
Subject: RE: 22-13 C of S Howard Z. Smith

Terese,

I am not the correct person to handle this. I am going to forward it to Thad Fowler, in our Right of Way Department.

Thanks.

Blaine Smith

Utility Coordinator

Dist 1 Area 2

Osage City KS

785-528-3128

785-393-2231

From: tgorman@douglas-county.com [<mailto:tgorman@douglas-county.com>]
Sent: Thursday, February 13, 2014 11:56 AM
To: Blaine Smith
Subject: FW: 22-13 C of S Howard Z. Smith

Blaine, I have a question about r-o-w on US-40 and am not sure who to ask. Attached is a Certificate of Survey. The south property line is adjacent to US-40. This survey shows 33 feet of r-o-w currently dedicated. Does KDOT want to request this person to dedicate additional r-o-w along US-40 with this Certificate of Survey? Is so, how much additional r-o-w would KDOT like?

If you are not the correct person to answer this question, will you please point me in the right direction? Thanks Blaine.

Terese

From: PW - Sontag, Kevin
Sent: Thursday, February 13, 2014 11:34 AM
To: PW - Gorman, Terese
Subject: FW: 22-13 C of S Howard Z. Smith